



10 SEP 2007

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In re Application of
OGILVY

U.S. Application No.: 10/585,071

PCT No.: PCT/AU99/01010

Int. Filing Date: 16 November 1999

Priority Date: 16 November 1998

Attorney Docket No.: CRD-0006

For: METHOD AND APPARATUS FOR
PROGRAMMING COMPUTING DEVICES

DECISION ON PETITION

UNDER 37 CFR 1.47(b)

This decision is in response to the "Petition Under 37 C.F.R. 1.47(b)" filed 14 May 2007 in the United States Patent and Trademark Office (USPTO). As authorized, the \$200.00 petition fee will be charged to deposit account number 04-1679.

BACKGROUND

On 02 November 2006, applicant was mailed a decision granting applicant's petition to revive pursuant to 37 CFR 1.137(b).

On 22 January 2007, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. In addition, applicant was notified of the need to provide a surcharge of \$130.00 for filing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date. (37 CFR 1.492(e)). Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 14 May 2007, applicant responded with the present petition accompanied by a petition for a two-month extension of time and payment of the appropriate extension of time fee. As such, applicant's response is considered timely filed.

DISCUSSION

Applicant is advised that the present petition references application 10/585,133; however, it is clear from the serial number, title and date of the Form PCT/DO/EO/905, that applicant's petition was intended for the present national stage application.

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(h); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant has satisfied items (1), (3), (5) and (6).

As to item (2), applicant has not provided sufficient evidence that the inventor, Ian Charles Ogilvy cannot be located. Applicant has included a declaration from Mr. Andrew Smyth indicating that papers were mailed to Mr. Ogilvy at his mother's residence; but that no response has been received nor is it known what Mr. Ogilvy's current address is. As such, applicant is required to show that a diligent effort was made to locate the missing inventor. As stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts." The statement of facts from Mr. Smyth does not satisfy this item. Applicant has not indicated that the searches detailed above have been undertaken nor provided any search results.

Regarding item (4) the filed declaration does not comply with 37 CFR 1.497(a)-(b) in that the signature page only lists the information of the individual signing on behalf of the corporate entity. Thus, it appears from the declaration that Mr. Donald E. Sweet is the sole inventor for the application. In order to proceed pursuant to 37 CFR 1.47(b) applicant is required to file a compliant declaration executed by the corporate entity on behalf of the non-signing inventor, which also provides the inventive information for the non-signing inventor. As explained in the MPEP at § 409.03(b):

Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

(B) The 37 CFR 1.47(b) applicant must state his or her relationship to the inventor as required by 37 CFR 1.64.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, **without prejudice**.

Any reconsideration on the merits of this petition must be filed within **TWO (2)**

MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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